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(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

CRA. No. 569/2005

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT	Bhang Sai, S/o Prem Sai, aged 29 years, Occupation: Cultivation, R/o village Kalyanpur, Police Station Ambikapur Dehat, District Sarguja (CG).
		-Versus-
	RESPONDENT	State of Chhattisgarh, Through In-charge Police Station Ambikapur Dehat, District Sarguja (CG).
	(Criminal Appeal under Section 374(2) of the Cr.P.C.)	
	6-12-2007	
	Heard Shri D.K. Vishwakarma, counsel for the appellant & Shri Arun Sao, Government Advocate for the State.	
	Oral judgment dictated on *dais*.	
	Dhirendra Mishra, J	
	This criminal appeal is directed against the judgment of conviction and order of sentence dated 25-6-2005 passed in Sessions Trial No.27/05 whereby the 2nd Additional Sessions Judge, Ambikapur, District Sarguja, has convicted the appellant under Sections 342 & 376(2)(g) of the Indian Penal Code and sentenced him to undergo R.I. for one year and R.I. for 10 years & to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for 2½ years, respectively. Both the sentences have been directed to run concurrently.	

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आदेश पत्रक (पूर्वानुबद्ध)

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2) Case of the prosecution, in brief, is that on 14-11-2004 at about 3.30 in the afternoon the prosecutrix, her niece Jumen & Saroj madam had gone to collect firewood in Koilari forest. All the three were collecting firewood separately. Around 4.30 in the afternoon the absconding accused namely, Umashankar and the accused/appellant Bhang Sai came near the prosecutrix caught her and started dragging her towards river. When she tried to shout, they inserted cloth in her mouth. Other two witnesses i.e. Jumen & Saroj got frightened and fled from there. Thereafter both the accused persons took her to the river and committed rape with her turn by turn. They also threatened her not to disclose about the incident otherwise, they shall kill her father. After returning from the forest, she narrated about the whole incident to her mother and when her father returned from duty in the next morning, she had informed about the incident to her father. Thereafter the report was lodged.

3) During investigation, prosecutrix was sent for medical examination where PW-15 Dr. (Smt.) Shipra Shrivastava examined her and gave the report of Ex.P/19.

4) After completing investigation, charge sheet showing co-accused Umashankar absconding, was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur, from where learned 2nd Additional Sessions Judge, received the same on transfer for trial.

5) During trial, prosecution examined 15 witnesses, in all. Thereafter statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case, pleaded innocence and false

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

implication. He took specific defence that he has animosity with the younger brother & uncle of the prosecutrix. His brother-in-law was beaten by Chowkidar Banwari. They had lodged the report of the above incident in the Police Station and because of this animosity false report has been lodged against him and against absconding accused Umashankar with whom he has no relation whatsoever.

6) Learned trial Court after hearing learned counsel for respective parties convicted and sentenced the appellant as mentioned in paragraph 1 of the judgment.

7) Learned counsel for the appellant submits that the version of the prosecutrix that she was ravished in the forest after she was dragged to a distance up to the river, does not find medical corroboration, as the doctor has not found any injuries over the person of the prosecutrix. The allegation is that two persons raped the prosecutrix against her wishes, however, there are no corresponding injuries on her private parts, which belie the allegations of the prosecutrix. He further argued that from perusal of the statement of other two witnesses namely, Jugmati (PW-3) & Saroj Madam (PW-4), it would be evident that the prosecutrix does not disclose about the incident to them immediately after the incident, which is also an unnatural conduct. He also argued that there is delay in lodging the report and there is no satisfactory explanation for the same.

8) On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

9) Conviction of the appellant is based on the statement of the prosecutrix (PW-2) as also the statements of Jugmati (PW-3) & Saroj Madam (PW-4). Having heard learned counsel for the parties, I have perused the record as also the impugned judgment.

10) The prosecutrix (PW-2) has deposed that on the date of incident she had gone with her niece Jugmati & Saroj Madam to forest to collect firewood. While she was collecting firewood, the appellant caught her both the hands, lifted her and took her to a distance, when she tried to shout he inserted cloth in her mouth. At that time, absconding accused Umashankar also came there and he tied her both hands with his Lungi. Thereafter she was made to lie. Accused/appellant Bhang Sai committed rape with her and thereafter, absconding accused Umashankar also committed rape with her. Both the accused persons were holding axe and threatened her not to shout & not to disclose about the incident to any one. Her niece Jugmati, who was collecting firewood nearby & Saroj Madam, who was at a distance, both had seen the incident, got frightened and fled from there. After the incident, she ran to the place where her niece & Saroj Madam were standing. At that time Umashankar also reached there and there also he threatened her not to disclose about the incident. Her mother asked that why she was weeping, whereupon she replied that she would never go to forest. At that time, absconding accused Umashankar again entered in her house and asked her not to disclose about the incident. She narrated about the incident to her mother, which was also heard by her sister. Her father returned from duty at about 11.00 to 12.00 hours on the following day. She narrated about the incident to her father also. Thereafter they lodged the report. In her cross-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

examination, defence has asked about various details of the act committed by the accused persons & her reaction to their act. She has answered all the offending questions in such a manner that it inspires confidence. Nature of the questions is that she was a consenting party; however, she has stoutly denied the suggestion of consent. Defence has not been able to elicit anything, which makes her version un-trustworthy or un-reliable. She has admitted that she has married twice and her former husband had deserted her. A suggestion has been made that she is a loose character lady, which has been denied. She has also denied the suggestion that she has proposed to marry Umashankar or that she is in love with Bhang Sai and she was having sex with Bhang Sai with her consent and that she has illicit relation with Umashankar.

11) Version of the prosecutrix is duly corroborated from the statement of her niece Jugmati (PW-3), who has stated that while she was collecting firewood in the forest, appellant Bhang Sai caught her aunt from the hand, she had raised an alarm on being caught, however, she was frightened, fled from there and went near Madam. She also narrated about the incident to Jagjivan (PW-8).

12) Similar is the statement of Saroj Bada (PW-4), who has stated that when she was collecting firewood all of a sudden Jugmati (PW-3) came running and told her that the prosecutrix has been caught by the boys, as a result of which she got frightened. Both of them went towards forest and told about the incident to Jagjivan (PW-8). After half an hour, the prosecutrix came and behind her absconding accused Umashankar also came there. The prosecutrix did not tell them anything, however, she complained that why they have fled leaving her alone. Leading questions have been asked with the

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permission of the Court to this witness. In answer to the questions, she said that she fled for saving her life, as she was frightened.

13) PW-5 Savitri, sister of the prosecutrix, has also corroborated the statement of the prosecutrix. She has also stated that while the prosecutrix was weeping after returning from forest, at that time absconding accused Umashankar came there and threatened them. PW-6 Budhini Bai Das, mother of the prosecutrix, PW-7 Ram Kewal Manikpuri, father of the prosecutrix & PW-8 Jagjivan have corroborated the version of the prosecutrix and two other witnesses namely, PW-3 Jugmati & PW-4 Saroj have also corroborated the version of the prosecutrix.

14) So far as the argument of learned counsel for the appellant that absence of injury over person of the prosecutrix is suggestive of the fact that she was a consenting party is concerned, in the matters of gang rape Section 114A of the Indian Evidence Act, 1872, provides for presumption of absence of consent where the prosecutrix alleges that she was raped by the accused persons without her consent. Defence has not been able to elicit anything by way of cross-examination of this witness to rebut the above presumption, as the version of the prosecutrix also finds corroboration from the statement of independent witnesses.

15) So far as the argument that there is no explanation for delay of more than 24 hours in lodging the report is concerned, the prosecutrix herself stated that after the incident she narrated about the same to her mother and the report was lodged on 15-11-2004 at about 18.30 hours only after return of her

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father from duty on the following day at about 11.00 to 12.00 hours. Thus, the delay in lodging the report has been duly explained.

16) It was also argued that the conduct of the prosecutrix in not disclosing about the incident immediately to Jugmati & Saroj creates doubt. The victim of gang rape, who was also threatened by one of the accused persons after commission of offence, is not expected to disclose about the incident to others immediately. She has disclosed about the incident to her mother after returning from forest and she has also complained before the two witnesses i.e. Jugmati & Saroj as to why they left her alone. Thus, there is no abnormality in the conduct of the prosecutrix, which renders her version doubtful.

17) For the foregoing reasons, I do not find any ground to interfere with the finding of the trial Court and the trial Court has not committed any illegality or infirmity in passing the impugned judgment.

18) In the result, the appea fails, same is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge